

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OMAR WILEY,

Plaintiff,

v.

KYLE BURGESS, *et al.*,

Defendants.

CASE NO. C05-1948RSM

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTIONS IN LIMINE

This matter comes before the Court on plaintiff's Motions in Limine. (Dkt. #102).  
Defendants oppose this motion. (Dkts. #110).

Having reviewed plaintiff's motion, defendants' response, plaintiff's reply, and the  
remainder of the record, the Court hereby finds and ORDERS:

(1) Plaintiff's Motion in Limine to Exclude Evidence (Dkt. #102) is GRANTED IN PART  
and DENIED IN PART as follows:

a. Exclusion of Plaintiff's Driving Record: Plaintiff's motion is STRICKEN as  
premature. The Court reserves ruling on this evidence if and when it arises during trial.

b. Reference, Mention or Implication that a Judgment Would be Paid by or  
Through Assets or Income of the Defendant Troopers Personally, or That They Lack Insurance

1 or Indemnification: Plaintiff's motion is GRANTED IN PART and DENIED IN PART.

2 Plaintiff argues that evidence of defendants' financial condition is inadmissible to the issue of  
3 liability. It is well established that a "liable party's ability to pay should not influence the amount  
4 of the assessment." *U.S. v. Charles George Trucking, Inc.*, 34 F.3d 1081, 1087 (1st Cir. 1994);  
5 *see also Vasbinder v. Ambach*, 926 F.2d 1333, 1344 (2nd Cir. 1991) (finding that a defendant's  
6 ability to pay is normally a class of evidence that is not admissible during the liability and  
7 compensatory damages phase of a case). Therefore the Court holds that defendants shall not  
8 offer such evidence during the liability portion of the trial. However, evidence of a defendant's  
9 financial condition is relevant if a plaintiff makes a prima facie claim of punitive damages. *See*  
10 *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 439, 114 S.Ct. 2331, 2344 (1994). Here,  
11 plaintiff seeks punitive damages. Therefore the Court agrees with defendants that if plaintiff  
12 attempts to offer evidence of the defendants' ability to pay, defendants will be entitled to rebut.

13 c. Defense Police Procedures Expert Robert M. Bragg, His Report and All  
14 Documents Referenced in His Report: Plaintiffs argue that Robert Bragg's testimony should be  
15 excluded because he is only an instructor and has never been a patrol officer or made a traffic  
16 stop. However, Mr. Bragg has substantial experience as "Program Manager of Physical Fitness  
17 and Defense Tactics Instructor" and has "personally trained thousands of line officers across all  
18 areas of the criminal justice arena." (Dkt. #30, Attachment 2). Furthermore, defendants are  
19 offering the testimony of Mr. Bragg to examine the defendants' conduct based on the training  
20 they received. Therefore Mr. Bragg's testimony is relevant to whether defendants acted  
21 reasonably under the Fourth Amendment's "objectively reasonable" standard. Accordingly,  
22 plaintiff's motion is DENIED.

23 d. Plaintiff's Prior Arrests and Irrelevant Convictions: Plaintiff's motion is  
24 STRICKEN as premature. The Court reserves ruling on this evidence if and when it arises

1 during trial.

2 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

3 DATED this 1 day of October, 2007.

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5 RICARDO S. MARTINEZ  
6 UNITED STATES DISTRICT JUDGE  
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